

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**ROBERTO I. LOPEZ,**  
*also known as Miguel A. Dotel Sierra,*

Plaintiff,

v.

**Case No. 17-CV-526**

**FRANK LISK, JR.,  
GILBERT HERNANDEZ,  
KATHY HEIN,  
ALFREDO GUTIERREZ,  
MICHAEL A. DITTMANN,  
ABNER VALCARCEL,  
ALFONSO MORALES,  
FERNANDO A. VIERA,  
ALMODOVAR, and  
MARK WILLIAMS,**

Defendants.

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**RECOMMENDATION TO DISMISS ACTION FOR LACK OF DILIGENCE**

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Roberto I. Lopez is currently incarcerated at Columbia Correctional Institution. He filed this action without the assistance of counsel on April 13, 2017, seeking redress under 42 U.S.C. § 1983 for violations of his constitutional rights. The matter was randomly assigned to this Court, and Mr. Lopez subsequently consented to magistrate judge jurisdiction. *See* Consent to Proceed Before a Magistrate Judge, ECF No. 8 (citing 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(b)).

Along with his complaint, Mr. Lopez filed a request to proceed without prepaying the full filing fee. On September 5, 2017, the Court ordered Mr. Lopez to

forward to the Clerk of Court by September 26, 2017, the sum of \$13.37 as an initial partial filing fee in this action. *See* Order, ECF No. 17. The Court advised Mr. Lopez that upon payment of this fee it would determine whether the action could proceed without prepayment of the full filing fee.

Mr. Lopez failed to pay the initial partial filing fee by the required deadline. On October 11, 2017, the Court issued an order requiring Mr. Lopez to either pay the fee or show cause why this action should not be dismissed for failure to pay. *See* Order to Show Cause Regarding Non-Payment of Initial Partial Filing Fee, ECF No. 19. The Court warned Mr. Lopez that his failure to respond by November 1, 2017, would result in dismissal of this action. To date, the Court has not received Mr. Lopez's initial partial filing fee or a response to the show-cause order. The Court therefore infers that Mr. Lopez no longer wants to prosecute this action.

Because not all parties have had the opportunity to consent to magistrate judge jurisdiction, *see Coleman v. Labor & Indus. Review Comm'n*, 860 F.3d 461 (7th Cir. 2017), the matter will be referred to a district judge for review of my recommendation that this action be dismissed for failure to prosecute, failure to comply with court orders, and lack of diligence.

**NOW, THEREFORE, IT IS HEREBY RECOMMENDED** that this action be **DISMISSED without prejudice** pursuant to Fed. R. Civ. P. 41(b) and E.D. Wis. Civ. L. R. 41(c). The Clerk of Court is directed to send a copy of this Recommendation to the warden of Columbia Correctional Institution.

Your attention is directed to 28 U.S.C. § 636(b)(1)(B) and (C), Fed. R. Civ. P. 72(b)(2), and E.D. Wis. Gen. L. R. 72(c), whereby written objections to any recommendation herein, or part thereof, may be filed within fourteen days of service of this Recommendation. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Failure to file a timely objection with the district judge shall result in a waiver of your right to appeal. If no response or reply will be filed, please notify the Court in writing.

Dated at Milwaukee, Wisconsin, this 16th day of November, 2017.

**BY THE COURT:**

*s/ David E. Jones*  
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DAVID E. JONES  
United States Magistrate Judge